

United States District Court
Southern District of California

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 10-CR-4246 JM
) Jury Trial/Day 1
BASAALY SAEED MOALIN,) Monday, January 28, 2013
MOHAMAD MOHAMAD MOHAMUD)
ISSA DOREH,)
AHMED NASIR TAALIL MOHAMUD,)
)
Defendants.)
_____)

Before the Honorable Jeffrey T. Miller
United States District Judge

Official Interpreters: Ayderus Ali, CCI
Fanik Jama, CCI

Official Court Reporter: Debra M. Henson, CSR, RPR
U.S. Courthouse
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San Diego, CA 92101
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Record produced by stenographic reporter

1 Appearances

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1 San Diego, California - Monday, January 28, 2013

2 (Defendant A. Mohamud is being assisted by a Somali
3 interpreter.)

4 THE CLERK: Calling matter 1 on calendar,
5 10-CR-4246, USA versus Basaaly Saeed Moalin, Mohamad Mohamad
6 Mohamud, Issa Doreh, Ahmed Nasir Taalil Mohamud, set for jury
7 trial.

8 THE COURT: Good morning to all of you, gentlemen.
9 It's nice to see you. Nice to see you at counsel table.
10 Counsel, I just wanted to see you all here before we bring
11 the jurors over. We have -- did all counsel state their
12 appearances? Okay. Counsel, why don't you state your
13 appearances, please.

14 MR. COLE: William Cole, Caroline Han, and Steven
15 Ward for the United States.

16 THE COURT: Thank you.

17 MR. DRATEL: Good morning, your Honor. Joshua
18 Dratel for Basaaly Moalin. Alice Fontier will be joining me
19 momentarily.

20 THE COURT: Okay. Very good. Thank you.

21 MS. MORENO: Good morning, your Honor. Linda
22 Moreno on behalf of Mr. Mohamad Mohamud.

23 MR. GHAPPOUR: Good morning, your Honor. Ahmed
24 Ghappour on behalf of Issa Doreh, who is present.

25 MR. DURKIN: Tom Durkin on behalf of Nasir Taalil

1 -- Ahmed Nasir Taalil Mohamud, who's present and in custody.

2 THE COURT: Okay. Thank you very much. Okay.

3 We're still waiting on the interpreter. I understand that

4 the interpreter had to leave momentarily just to retrieve --

5 is the interpreter here? You're back. You've returned.

6 Okay. The second interpreter? Okay. We're waiting for the

7 second interpreter. Sir, do you need the microphone?

8 THE INTERPRETER: I will need the microphone, your

9 Honor, so that he can use --

10 THE COURT: Very good. Certainly. Okay. Very

11 good. In any event, the second interpreter will be here just

12 as soon as a piece of equipment is retrieved.

13 We have I believe 75 -- 74 prospective jurors who

14 will be reporting here very shortly, which is a very good net

15 number. We had a couple of people who needed to be excused

16 this morning, and there was -- for very good cause, emergent

17 matters affecting two people, so we will see 74 people over

18 here very shortly, and we will start the process. I think

19 that's about it. I just wanted to take the pulse and greet

20 everyone before we proceed.

21 I'm hopeful that we can get the jurors over here

22 within 10 or 15 minutes. They'll all be brought in, they'll

23 be placed in seats randomly wherever they choose to sit

24 behind the bar, there may be some seating available in the

25 back for the public, and then we'll proceed.

1 I've got an updated or revised questionnaire. I
2 haven't had an opportunity to review it. I assume that the
3 changes we discussed have been made. Ms. Moreno?

4 MS. MORENO: Yes, your Honor. That is correct,
5 sir.

6 THE COURT: Okay. Very good. Thank you. I would
7 think it's entirely foreseeable that we'll be proceeding into
8 the noon hour for some of the jurors to complete their
9 questionnaires. I will be attending a meeting, a judges'
10 meetings of the Court, from 1:00 until 2:00 this afternoon,
11 so then when we do resume at two o'clock for the purpose of
12 reviewing the questionnaires that have been filled out and
13 submitted back, then we'll proceed at 2:00 with that. We'll
14 each have an opportunity to look over the questionnaires and
15 identify any red flags and then have an opportunity to
16 discuss those issues and put those on the record.

17 So that's pretty much where we're going this
18 morning. Any questions about this morning? Mr. Cole, any
19 questions from the government?

20 MR. COLE: No, your Honor.

21 THE COURT: Okay. Ms. Moreno?

22 MS. MORENO: Your Honor, did the Court wish us to
23 file this final draft electronically?

24 THE COURT: The final draft of --

25 MS. MORENO: Of the questionnaire.

1 THE COURT: Well, it will -- it should be. It
2 should be. It's either filing electronically or it's a court
3 exhibit. Either way it works because it's a part of the
4 record if we proceed in that fashion.

5 MR. DRATEL: May I have a moment, your Honor?

6 THE COURT: Yes, sir.

7 MR. DRATEL: I just wanted to clarify on the time
8 today in the sense that I thought I heard the Court say that
9 jurors might need till the noon hour the complete the
10 questionnaire.

11 THE COURT: They may well go into the noon hour.

12 MR. DRATEL: Right. And then they have to be
13 copied. So coming back at two o'clock seems to be a little
14 early. I think --

15 THE COURT: Well, I'll be available at two
16 o'clock --

17 MR. DRATEL: Oh, okay.

18 THE COURT: -- So I'm hopeful that everybody will
19 be back here by two o'clock. We'll be ready with all copies
20 that are necessary on or before two o'clock.

21 MR. DRATEL: I think just for purposes of --

22 THE COURT: You don't need -- technically you don't
23 need me to return if that's your concern, Mr. Dratel.

24 MR. DRATEL: No, it was more about -- I think it
25 would be more efficient if, once we get the questionnaires

1 and they're copied and we get them, if we had a certain
2 amount of time to review them on our own and then talk to the
3 government about the possible agreements, that we could then
4 have less time before the Court. So I think a little bit --
5 building a little bit of additional time --

6 THE COURT: That's fine. I have no objection or
7 concern about that, but I wouldn't want that process to slow
8 us down. Keep in mind that our jury commissioner needs to
9 know what the final list is, those people who will be
10 requested to return for the second day, no later than five
11 o'clock.

12 MR. DRATEL: Right.

13 THE COURT: So time is going to be at a premium
14 here even though we're getting an early start.

15 MR. DRATEL: The reason I say that is because if we
16 had an extra half hour or 45 minutes alone to review them and
17 split them up, it's actually better than going through them
18 one by one in court, which I think is more workable --

19 THE COURT: If we can identify 10, 15, 20, however
20 many people that are clearly out because of the way in which
21 they responded to the questionnaire, that's fine. Both sides
22 can stipulate to their -- to them being excused from any
23 service on this case, and then we can just concentrate on a
24 smaller number, and that's fine as well. All I'm saying is
25 if you -- if you undertake that process, if we're going to

1 build that into our approach today, it really -- you need to
2 be very mindful of the time that you're going to spend on
3 that part of it.

4 MR. DRATEL: I agree, your Honor.

5 THE COURT: Okay.

6 MR. DRATEL: I'm just thinking --

7 THE COURT: I appreciate the suggestion.

8 MR. DRATEL: Let's see where we are when we --

9 THE COURT: Yeah, I appreciate the suggestion.

10 Thank you. Anything further? Okay. Then we'll call over
11 our jury panel, and we will get started. Thank you.

12 Counsel, excuse me. One further thing. The
13 indictment needs to be read to the jury in pertinent part.
14 Mr. Cole, you can certainly do that or I can do it; it makes
15 no difference to me. Anybody have any preference? Do you
16 have any preference as to whether the Court does it or
17 whether you do it?

18 MR. COLE: Whatever the defense prefers. It
19 doesn't matter to me if it's me or you. I don't know if the
20 defense has a preference.

21 THE COURT: I typically do it.

22 MR. DRATEL: Judge, we prefer your Honor do it.

23 THE COURT: All right.

24 (There was a break in the proceedings.)

25 THE CLERK: Calling matter 1 on calendar,

1 10-CR-4246, USA versus Basaaly Saeed Moalin, Mohamad Mohamad
2 Mohamud, Issa Doreh, Ahmed Nasir Taalil Mohamud, set for jury
3 trial.

4 THE COURT: Counsel, would you please state your
5 appearances and indicate your readiness to proceed.

6 MR. COLE: Good morning, your Honor. William Cole
7 along with Caroline Han and Steven Ward for the United
8 States. We're ready to proceed.

9 THE COURT: Thank you.

10 MR. DRATEL: Good morning, your Honor. Joshua
11 Dratel and Alice Fontier for Basaaly Moalin. We are ready to
12 proceed. Mr. Moalin is seated between us.

13 THE COURT: Thank you.

14 MS. FONTIER: Good morning, your Honor.

15 MS. MORENO: Good morning, your Honor. Linda
16 Moreno on behalf of Mr. Mohamud. Ready for the defense.

17 THE COURT: Thank you.

18 MR. GHAPPOUR: Good morning, your Honor. Ahmed
19 Ghappour on behalf of Issa Doreh. Ready for the defense.

20 MR. DURKIN: Good morning, Judge. Tom Durkin on
21 behalf of Ahmed Nasir Taalil Mohamud, who's seated to my
22 right, and we're ready to begin.

23 THE COURT: All right. Thank you. Ladies and
24 gentlemen of the jury pool, a very good morning to you.
25 Thank you for being here. Thank you for your patience. I

1 know logistically it was a little bit of a challenge getting
2 you over here today. We have a new courthouse just behind
3 us, the annex. We haven't even had the formal opening yet
4 for that courthouse, and so you're really truly one of the
5 first jurors, relatively speaking, to assemble in that new
6 jury assembly room, and of course being brought over here to
7 the old courthouse where they used to do everything is a bit
8 of a process. So thank you for your time and your patience,
9 and it's very good that you're all here.

10 Judge Irma Gonzalez, one of our district judges
11 here in the Southern District of California, who occupies
12 this courtroom, has been very gracious in allowing me to use
13 her courtroom for just the first two days in the course of
14 jury selection; we're going to use this courtroom today and
15 tomorrow. And once the trial itself starts, we're going to
16 be back into my courtroom, which is on the fifth floor. So
17 we'll be moving you around a little bit. We'll always give
18 you direction as a bit of a head's up, letting you know
19 exactly when and where you need to be.

20 I'm going to defer the introduction of counsel for
21 just a little bit and tell you a few basics about this case.
22 I want to give you a little bit of a roadmap as to where we
23 are going today and tomorrow in terms of jury selection.

24 There are several different aspects to this -- to
25 this process, but let me just say that at this point in time,

1 in just a few minutes, you'll be given an oath as prospective
2 jurors. All prospective jurors take this oath, and the oath
3 is given to you to mark the solemnity of the proceedings
4 about which you are about to embark and also to impose upon
5 you the obligations of being truthful, of being candid with
6 us as you answer questions later on today and tomorrow and
7 also as you fill out a questionnaire. It is really is
8 imperative, essential that you be truthful for us so that
9 ultimately we select a jury in this case of 12 jurors, and
10 we're going to select two or three alternates, in all
11 probability three alternate jurors, once we have the trial
12 ready to go.

13 In any event, after -- after the oath is
14 administered to you, I'm going to tell you a bit about this
15 case. Suffice it to say at this particular point in time, it
16 is a criminal case. The U.S. Attorney's office here in the
17 Southern District of California with Assistant U.S. Attorneys
18 seated to my right here, will be trying the case for the
19 government, and then we have the defense community, we have
20 four defendants here, each of whom is represented by counsel.
21 All of them will be introduced to you in just a little bit.

22 But in any event, after the oath then I'm going to
23 ask a very important question which will become apparent as
24 to its importance, and then after I ask you that important
25 question after you've taken the oath, I am going to give some

1 general instructions to you that might be of assistance to
2 you -- I dare say will be of assistance to you if you're
3 selected as a juror in this case.

4 I will ask some general questions of you bearing
5 upon your ability to be a fair and impartial juror in this
6 particular case, and then after that, after all of those
7 things have been done, we are going to distribute anonymous
8 questionnaires to each and every one of you. The
9 questionnaire is a pretty thorough questionnaire, and we're
10 going to allow you to fill out that question here -- that
11 questionnaire here in this courtroom. We are all going to
12 vacate the courtroom while you do that, so you'll be filling
13 out the questionnaire by yourselves. And then as soon as you
14 finish filling out the questionnaire, you'll be released for
15 the day.

16 I'm hopeful that we can have those questionnaires
17 completed by each of you and then turned in by, you know,
18 12:00, 12:30, however long it takes. The most important
19 thing is that you're filling out the questionnaire in a
20 candid and truthful way.

21 Then we're going to look at those questionnaires; I
22 and counsel will look at the questionnaires, try to assess
23 them, and you will then be advised -- remember, you're going
24 to be released after you finish the questionnaire -- you will
25 then be advised when you call in this evening after six

1 o'clock whether you will be required to report tomorrow at 9
2 a.m. -- not here directly to this courtroom but to another
3 courtroom. I'll tell you a little bit more about that. It
4 will be in this building. And the majority of you will be
5 reporting here tomorrow; there's no questioning that.

6 So that's pretty much what our roadmap is for
7 today, ladies and gentlemen. So without further ado, may I
8 please ask that you each stand and raise your right hand to
9 be sworn as prospective jurors.

10 THE CLERK: Ladies and gentlemen, you, and each of
11 you, do solemnly swear that you will true answers make to
12 such questions as may be put to you touching upon -- touching
13 upon your qualifications to serve as trial jurors upon the
14 trial of the cause now before this Court? If so, please say
15 yes.

16 (The jurors answered.)

17 THE COURT: All right. Thank you, ladies and
18 gentlemen. And if you would please be seated at this point.
19 Okay. I indicated that after you took the oath, I would give
20 you a bit of an indication about what this case is about, and
21 so I have a very brief summary statement about the nature of
22 this case; the attorneys have been good enough to agree on
23 the content of this description, and here it is:

24 This is a criminal case in which the United States
25 has charged four individuals with providing material support,

1 principally in the form of money, to terrorists in Somalia,
2 providing material support to a foreign terrorist
3 organization, al-Shabaab, in Somalia, and conspiracy to do
4 the same. Somalia is a country in Africa. These individuals
5 are charged in multiple counts. They each deny all
6 allegations and are presumed to be innocent.

7 Now, ladies and gentlemen, the question I have for
8 you now that I've told you what the nature of this case is,
9 is as follows: If there is anyone here who feels that
10 because of the nature of the case, he or she cannot be fair
11 and impartial in this case, or for some personal reasons,
12 some experience you might have had or because of some
13 experience someone very close to you might have had such as
14 an immediate family member or a very close friend, you cannot
15 be fair and impartial, would you please raise your hand
16 indicating that.

17 All right. I'm going to ask for your names at this
18 point. I see just a few of you who have raised your hand.
19 Let's take it on my right side of the courtroom. I saw two
20 or three hands go up. Sir, we may be able to get you a
21 microphone if that might be helpful. Everyone should be able
22 to hear you. On the right side there. All right. Sir,
23 would you please state your name.

24 PROSPECTIVE JUROR: Richard Dicker.

25 THE COURT: Would you please spell your last name.

1 PROSPECTIVE JUROR: D-i-c-k-e-r.

2 THE COURT: Thank you, Mr. Dicker. And I think
3 there were a few others on the right side of the courtroom.
4 All right. Please, would you stand, sir.

5 PROSPECTIVE JUROR: Michael Gerow, G-e-r-o-w.

6 THE COURT: Anyone else on that -- on my right side
7 of the courtroom whose hand was raised? I see no other
8 hands. On my left side of the courtroom, I saw a few hands
9 go up, so if we can pass the microphone to those individuals.

10 PROSPECTIVE JUROR: Jack Fernandez,
11 F-e-r-n-a-n-d-e-z.

12 THE COURT: Thank you, sir.

13 PROSPECTIVE JUROR: Gerardo Ochoa, O-c-h-o-a.

14 THE COURT: First name, sir?

15 PROSPECTIVE JUROR: Gerardo.

16 THE COURT: Spell the first name.

17 PROSPECTIVE JUROR: Gerardo, G-e-r-a-r-d-o.

18 THE COURT: Thank you very much.

19 PROSPECTIVE JUROR: Name is Kevin Travis, your
20 Honor, T-r-a-v-i-s.

21 THE COURT: T-r-a --

22 PROSPECTIVE JUROR: -- v-i-s, Travis.

23 THE COURT: First name, sir?

24 PROSPECTIVE JUROR: Kevin.

25 THE COURT: Thank you. Anyone else on my left

1 side? There's one -- well, I see another hand go up. I
2 think there are two more.

3 PROSPECTIVE JUROR: My name is Patrick Rhamy,
4 R-h-a-m-y.

5 THE COURT: R-h-a-m-y, Patrick. Thank you. I
6 think we have one more hand there, Nancy.

7 PROSPECTIVE JUROR: Denise Herron, H-e-r-r-o-n.

8 MR. COLE: Thank you, Ms. Herron. And I think
9 that's all the hands that I saw. Very good. Well, okay.
10 Let me say at this point for the seven of you who raised your
11 hand, I'd like to briefly speak with each one of you here at
12 the side of the bench just to see what your particular
13 concern is. I'll be doing that with counsel. And anytime we
14 have a little conference here at the side of this bench or
15 when the trial gets going, please feel free to just relax
16 where you are, you can chat amongst yourselves as long as you
17 don't talk about the case; do not discuss this case or any
18 subject related to the case. And then we'll always be back
19 with you just as soon as we can.

20 So with that, Mr. Dicker, may I ask you to come
21 forward please. Mr. Gerow, you'll be on deck, Mr. Fernandez
22 after that. For those who are waiting, the seven of you, you
23 can just wait right behind that bar, and then we'll bring you
24 back one at a time over here.

25 (Following is a sidebar conference.)

1 THE COURT: What is the nature of your concern, Mr.
2 Dicker? Mr. Dicker?

3 PROSPECTIVE JUROR: Well, given my religious
4 background and my political orientation, I don't think I
5 would be objective in this case.

6 THE COURT: Okay. Let me say this. The most
7 important thing you just said is you don't think you can be
8 objective in the case. I don't want you to assume that
9 because of your religious background or your political
10 orientation -- I dare say we'll have jurors of all political
11 persuasions on this jury and with different religious
12 backgrounds, so don't assume --

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: -- for a moment that because you have a
15 particular point of view, political or whatever, that you're
16 ineligible to be a juror.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: However, that being said, do you feel
19 you could be fair and impartial in this case or do you
20 already find yourself leaning one way or the other because of
21 the nature of the charges?

22 PROSPECTIVE JUROR: I'm not certain I could be
23 impartial in the case.

24 THE COURT: This is as you're looking through the
25 lens of your political and/or religious views?

1 PROSPECTIVE JUROR: I'm a psychologist. I mean I
2 really have a sense of where am I and that there's some bias
3 here.

4 THE COURT: Well, if that's the way you feel, I'm
5 going to excuse you for cause.

6 PROSPECTIVE JUROR: Okay.

7 THE COURT: Thank you for you time and service.
8 We'll ask that you return to the jury lounge at this time,
9 and --

10 PROSPECTIVE JUROR: In the other building?

11 THE COURT: Yeah, and they'll have further
12 information for you. Thank you, Mr. Dicker. Mr. Gerow?
13 Come on in, Mr. Gerow. I know this is a little intimidating
14 here, but come on forward --

15 PROSPECTIVE JUROR: Just a little.

16 THE COURT: That's okay. You're talking to me at
17 this point.

18 PROSPECTIVE JUROR: All right.

19 THE COURT: What's the nature of your concern?

20 PROSPECTIVE JUROR: I do not feel that I could be
21 impartial in this case because of my political beliefs that
22 these people are possibly funneling money as to terrorist
23 organizations that are directly responsible for the murder of
24 innocent children, women, and men. As a veteran --

25 THE COURT: Go ahead, sir.

1 PROSPECTIVE JUROR: -- I just -- I despise the
2 religion of Islam, the radical elements of it, which are --
3 these people are since there'd be al-Qaeda type of, you know,
4 fundamental --

5 THE COURT: You just assume that all Muslims are --
6 sounds like you're saying all Muslims are terrorists, or most
7 of them?

8 PROSPECTIVE JUROR: No, no, I'm not saying that.
9 This particular case -- I don't know. Seems I guess I do
10 have a prejudice against it.

11 THE COURT: Just the charges are enough for you,
12 just hearing the charges --

13 PROSPECTIVE JUROR: Yes, just enrages me.

14 THE COURT: Okay. I'm going to excuse you for
15 cause. Thank you for your time and service. I'll ask that
16 you return to the jury lounge at this time.

17 PROSPECTIVE JUROR: Certainly.

18 THE COURT: They'll have more information for you
19 over there. All right.

20 PROSPECTIVE JUROR: All right. Thank you.

21 THE COURT: Thank you, Mr. Gerow. Mr. Fernandez,
22 please. Good morning, sir.

23 PROSPECTIVE JUROR: Good morning.

24 THE COURT: What's the nature of your concern, Mr.
25 Fernandez?

1 PROSPECTIVE JUROR: Well, I work for a defense
2 contractor, and I've got a secret clearance, and I take oaths
3 there. And anything related to our military or terrorism --
4 I am patriotic, so my feelings are strong, strongly held
5 towards -- I want to say -- I just don't feel I can be
6 impartial amongst the -- you follow me?

7 THE COURT: Well, I think I might be able to. Are
8 you telling me that just hearing the charges -- and realizing
9 they're just charges -- is enough for you to somehow -- you
10 feel that just puts you over the line and you're already --

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: -- you're already favoring the
13 government?

14 PROSPECTIVE JUROR: Yes, yes.

15 THE COURT: And you can't objectively look at the
16 evidence?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: I do appreciate your candor. I'll ask
19 that you return to the jury lounge at this time. I thank you
20 for your time and service. They'll have more information for
21 you over there. All right.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: Thank you, Mr. Fernandez.

24 MS. MORENO: Excused for cause, your Honor?

25 THE COURT: Yes, all three of them. Mr. Ochoa,

1 then if we could have Mr. Travis and Mr. Rhamy and Ms. Herron
2 waiting behind Mr. Ochoa. Hello, Mr. Ochoa. Good morning,
3 sir. Would you tell me what your concern is.

4 PROSPECTIVE JUROR: I work with -- I'm a supervisor
5 for Homeland Security Investigations, and I know two of the
6 prosecutors, Ms. Han and Mr. Cole here.

7 THE COURT: Okay. This case is a little too close
8 for you, it sounds like.

9 PROSPECTIVE JUROR: Right.

10 THE COURT: I'll excuse you for cause and ask that
11 you go back to the jury lounge. Thank you for your time and
12 service.

13 PROSPECTIVE JUROR: Thank you.

14 THE COURT: Mr. Travis.

15 MS. MORENO: I think he wants Mr. Ochoa, your
16 Honor.

17 THE COURT: I think he wants them all back so far.
18 How are you, Mr. Travis?

19 PROSPECTIVE JUROR: Good morning.

20 THE COURT: Good morning to you. Would you please
21 tell me what the nature of your concern is.

22 PROSPECTIVE JUROR: I'm an attorney with the United
23 States Navy, been with them for 15 years.

24 THE COURT: Keep your voice down.

25 PROSPECTIVE JUROR: My brother-in-law is a

1 commander with the Navy for over 20 years, field officer with
2 the Navy. I would like to hold the prosecution to their
3 burden, but I don't know based on the facts that I hear I
4 might be able to do that.

5 THE COURT: This is just because of the --

6 PROSPECTIVE JUROR: The nature --

7 THE COURT: The military --

8 PROSPECTIVE JUROR: Just the military background
9 and --

10 THE COURT: Military background and your --

11 PROSPECTIVE JUROR: I know that -- the significant
12 burden the prosecutor has to provide. I just don't know if I
13 can, depending upon how emotional the facts are, whatever,
14 I'll be able to hold them to that burden. I just don't know.
15 I just have that doubt.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: There's nothing personal. I
18 don't know anything about the case.

19 THE COURT: But you're really doubting your ability
20 to be fair and --

21 PROSPECTIVE JUROR: The thing is I don't know at
22 this point in time.

23 THE COURT: Well, do you consider yourself to be a
24 fair person?

25 PROSPECTIVE JUROR: I consider myself to be a very

1 fair person. I consider myself to be an excellent attorney.
2 I just -- I just don't know. And I guess part of the reason
3 I consider myself an excellent attorney is I just don't know.
4 I can't commit. I don't know.

5 THE COURT: You can't commit to follow the law and
6 keep --

7 PROSPECTIVE JUROR: No, I will absolutely follow
8 the law.

9 THE COURT: And part of the law --

10 PROSPECTIVE JUROR: But biases come into play,
11 right, depending on --

12 THE COURT: Well, we all have our view of the
13 world.

14 PROSPECTIVE JUROR: Your Honor, I've said my piece.
15 You can make your decision.

16 THE COURT: Well, I'm trying to do so in an
17 informed way.

18 PROSPECTIVE JUROR: I think I would be an excellent
19 person on the jury panel. I just -- I just want to make sure
20 that this is something that where I'm at.

21 THE COURT: This is what I'm trying to gauge here.
22 When you're here giving me this information about the
23 military background, the family and all of that because
24 somewhere in your mind you feel this should be a
25 disqualifier, that if the Court and the parties, knowing

1 this, that this would somehow work against you and that
2 you're kind of falling on your sword. If that's your
3 mindset, then I want to -- I want to discourage you from
4 thinking that.

5 PROSPECTIVE JUROR: Okay.

6 THE COURT: If you feel, even though you're an
7 attorney, even though you understand the government's burden
8 of proof here, that you may not be able to keep the
9 government to its burden of proof because of family ties to
10 the military or because of any personal philosophy you may
11 have or because of any other reason, then that's what we need
12 to know.

13 PROSPECTIVE JUROR: Right. To be honest with you,
14 Judge, when I first came here and thought it would be a
15 criminal case, I thought it was, even though I work for the
16 United States government, I'm a defense attorney for them; I
17 do contract law. So my initial thought would be I was really
18 hold the government to their burden of proof, but the nature
19 of the case, I don't know if I could do it.

20 THE COURT: So what you're telling me is --

21 PROSPECTIVE JUROR: I just want to be honest with
22 the Court.

23 THE COURT: Oh, I appreciate that very much. You
24 seem to be telling me above and beyond the ties the family
25 has in the military and your own ties, you just feel that you

1 cannot commit yourself to being completely fair and impartial
2 in this case and to holding the government to its burden of
3 proof, come what may.

4 PROSPECTIVE JUROR: I just say I don't know. I
5 just -- I don't know.

6 THE COURT: Okay. I'll excuse you for cause,
7 Mr. Travis --

8 PROSPECTIVE JUROR: Okay.

9 THE COURT: -- and ask -- hold on, sir. Ask that
10 you return to the jury lounge.

11 PROSPECTIVE JUROR: Okay.

12 THE COURT: And they'll give you further
13 information. And thank you for your time and service.

14 PROSPECTIVE JUROR: Thank you.

15 THE COURT: Mr. Rhamy? Good morning, Mr. Rhamy.

16 PROSPECTIVE JUROR: Good morning.

17 THE COURT: How are you, sir?

18 PROSPECTIVE JUROR: Good.

19 THE COURT: Would you tell me what your concern is
20 here.

21 PROSPECTIVE JUROR: I work with Special Agent
22 Kaiser, who I see in the courtroom.

23 THE COURT: Okay. How are you employed?

24 PROSPECTIVE JUROR: FBI.

25 THE COURT: Okay. Sounds like the case is going to

1 be a little close for you here, so --

2 PROSPECTIVE JUROR: Yeah. Well, I think I could be
3 fair and impartial, but I just wanted to let you know.

4 THE COURT: Well, I appreciate that. I think it's
5 a little too close. I'll excuse you for cause and ask that
6 you return to the jury lounge. We thank you for your time
7 and service.

8 PROSPECTIVE JUROR: Across the street or here?

9 THE COURT: Unfortunately it's back to -- from
10 whence you came. Thank you, sir. Have you stacked this
11 panel with any other people that you work with or --

12 MS. MORENO: We'd like to talk to Mr. Rhamy though
13 after court, your Honor.

14 THE COURT: Ms. Herron, please. Thank you. Ms.
15 Herron, why don't you come forward, please. Good morning to
16 you.

17 PROSPECTIVE JUROR: Good morning.

18 THE COURT: Why don't you tell us what your concern
19 is, please.

20 PROSPECTIVE JUROR: Want me to start at the back or
21 the latest? My son is a Navy SEAL, and --

22 THE COURT: Very good.

23 PROSPECTIVE JUROR: And my feeling -- no, I don't
24 believe they deserve a trial here. No terrorist deserves a
25 trial in federal court.

1 THE COURT: You understand that --

2 PROSPECTIVE JUROR: I understand.

3 THE COURT: -- as these folks are here, they're not
4 terrorists; do you understand that?

5 PROSPECTIVE JUROR: Well, I have --

6 THE COURT: So what you're telling me is no
7 suspected terrorist --

8 PROSPECTIVE JUROR: Exactly.

9 THE COURT: -- deserves a trial.

10 PROSPECTIVE JUROR: Exactly.

11 THE COURT: What do we do, just kind of hang 'em --

12 PROSPECTIVE JUROR: In 1984 I happened upon a cell.

13 THE COURT: You happened upon a what?

14 PROSPECTIVE JUROR: I happened upon a group of men,
15 probably a cell. They had taken my mother's car, so -- that
16 was at Rees Stealy on Fifth Avenue.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: And then in '86, I had to
19 rescue a babysitter because next door was a group of men and
20 also discovered to be some other than. In 2001, 9-11, my
21 next door neighbors of my friend were discovered to be
22 Germans who were also -- they had just departed. They
23 were -- they were suspected terrorists.

24 THE COURT: Okay. Well, you've got very strong
25 feelings about the case, and --

1 PROSPECTIVE JUROR: I do.

2 THE COURT: -- and I would agree this case is
3 probably not the best for you.

4 PROSPECTIVE JUROR: I would love to be here, but I
5 don't believe this is my trial.

6 THE COURT: Okay. I'll excuse you for cause and
7 ask that you return to the jury lounge in the other
8 courthouse.

9 PROSPECTIVE JUROR: Okay.

10 THE COURT: Thank you for your time and service.

11 PROSPECTIVE JUROR: Okay. Thanks.

12 (Sidebar conference concludes.)

13 THE COURT: All right, ladies and gentlemen. We
14 are ready to proceed further. What I will now say is
15 intended to serve as an introduction to this case, ladies and
16 gentlemen; it's not a substitute for the detailed
17 instructions that you will receive at the end of the case
18 pertaining to the law if you are selected as a juror in this
19 case. Nevertheless, I do believe that my comments, my
20 instructions, will be helpful to you at this particular point
21 in time.

22 As I said earlier, this is a criminal case that has
23 been commenced by the government of the United States, who I
24 may sometimes refer to as the prosecution or the government.
25 And at this point what I'm going to do is take a little bit

1 of a break. I'm going to ask the members of the U.S.
2 Attorney's office here who will try the case to introduce
3 themselves to you and to name any witnesses who they may
4 intend to call during the course of the trial.

5 It's important at this point of introduction,
6 ladies and gentlemen, to observe carefully the participants
7 in this case and to listen to any names that might be
8 mentioned to you -- sorry, counsel. I didn't mean to catch
9 you a little bit unawares if I'm doing that -- so that if you
10 know anyone or think you know anyone, then you can let us
11 know, and we can follow up on that. So, Mr. Cole, are you
12 going to be doing the honors for the government?

13 MR. COLE: Yes, your Honor.

14 THE COURT: All right. Thank you.

15 MR. COLE: Thank you. My name is William Cole. I
16 am an Assistant United States Attorney. This is Caroline
17 Han, an Assistant United States Attorney. This is Steven
18 Ward, a Department of Justice Trial Attorney. And the names
19 of witnesses who may be called in this case are Matthew
20 Bryden, Concepcion Flores, Isagani Camangian, Tom Gathman,
21 Donnah Locsin, Victoria Homfeld, Mohamud Ahmed, Colleen
22 Reding, William Via, Catherine Klein, Tami Reis, Kristen
23 Monzon, Colby O'Very, Steven Carrillo, Barry Trent.

24 THE COURT: All right. Thank you, Mr. Cole.
25 Ladies and gentlemen, if there is anyone here who knows Mr.

1 Cole or Ms. Han or Mr. Ward or any of the names that were
2 mentioned by Mr. Cole, would you please raise your hand at
3 this time. And I see no hands.

4 And let me say something about what I just did,
5 what I just asked you to do. I asked you to affirmatively
6 respond to a question. It's a general question, and I'm
7 going to proceed that way, and I know counsel to a great
8 extent will proceed in the same manner once we get going,
9 once they actually are participating in this as well. We try
10 to ask general questions whenever we can rather than asking
11 the same question of you individually, and there are over 70
12 of you here, a little less now. We try to be efficient in
13 these matters.

14 And at this point I would ask that defense counsel
15 introduce themselves to you as well as their clients.
16 Defense counsel are under no obligation, ladies and
17 gentlemen, to list the names of any witnesses they may call.
18 I'll have more to say about that particular principle in a
19 bit, but, Mr. Dratel, would you please start us out.

20 MR. DRATEL: Thank you, your Honor. Good morning.
21 I'm Joshua Dratel. I represent Basaaly Moalin, who's
22 standing beside me.

23 MS. FONTIER: Good morning, ladies and gentlemen.
24 I'm Alice Fontier. I'm also here on behalf of Mr. Moalin.

25 THE COURT: Okay. Thank you. Thank you, counsel.

1 Thank you, Mr. Moalin. Ms. Moreno?

2 MS. MORENO: Thank you, your Honor. Good morning,
3 everyone. My name is Linda Moreno, and I represent
4 Mr. Mohamud.

5 THE COURT: Thank you, Ms. Moreno. Mr. Ghappour?

6 MR. GHAPPOUR: Good morning, everyone. My name is
7 Ahmed Ghappour, and I represent Mr. Issa Doreh, who is
8 standing to my right.

9 THE COURT: Okay. Thank you, Mr. Ghappour. Mr.
10 Durkin?

11 MR. DURKIN: Good morning. My name is Tom Durkin,
12 and I represent Ahmed Nasir Taalil Mohamud.

13 THE COURT: Thank you, Mr. Durkin. Ladies and
14 gentlemen of the jury pool, if any of you know any of the
15 attorneys who just introduced themselves to you who are
16 representing these gentlemen or any of the gentlemen
17 themselves, would you please raise your hand at this time. I
18 do see one hand raised. Okay. Perhaps I can ask this lady
19 to state her name first and then if she would be kind enough
20 to join us up here for just a moment.

21 PROSPECTIVE JUROR: Vanessa Amedee.

22 THE COURT: Okay. Would you spell that, please?

23 PROSPECTIVE JUROR: A-m-e-d-e-e.

24 THE COURT: Thank you, Ms. Amedee. May we see you
25 here at the side of the bench.

1 (Following is a sidebar conference.)

2 THE COURT: Okay. Who -- okay. What's the
3 connection?

4 PROSPECTIVE JUROR: I work at Federal Defenders.

5 THE COURT: Okay. What do you do at Federal
6 Defenders?

7 PROSPECTIVE JUROR: Case management coordinator.

8 THE COURT: How long have you been there?

9 PROSPECTIVE JUROR: Twenty-two years.

10 THE COURT: And you were actually working with
11 Ms. Fontier at some point?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. We'll dismiss you for cause at
14 this point, Ms. Amedee. Thank you.

15 MS. FONTIER: Nice to see you though.

16 THE COURT: Okay. Well, you deserve one.

17 (Sidebar conference concludes.)

18 THE COURT: Okay. All right. Thank you, ladies
19 and gentlemen. Moving to another phase of this day, this
20 case is based upon charges contained in an indictment, which
21 is another name for an information or a complaint. I'm going
22 to read you at this point the pertinent portions of this
23 indictment, but you should distinctly understand that what
24 I'm about to read are simply charges and that they are not in
25 any sense evidence of the -- in this case.

1 All right. This indictment -- the operative
2 indictment reads as follows: That at all relevant times,
3 al-Shabaab was a violent and brutal militia group that used
4 intimidation and violence to undermine Somalia's Transitional
5 Federal Government, which will be referred to oftentimes as
6 TFG, Transitional Federal Government, in Somalia and its
7 supporters.

8 On or about February 26, 2008, the U.S. Department
9 of State designated al-Shabaab as a foreign terrorist
10 organization, or an FTO, under federal law.

11 On or about March 18 of 2008, notice of
12 al-Shabaab's designation as an FTO was published in the
13 Federal Register, and the designation has remained in effect
14 continually.

15 Al-Shabaab was also know by the following names,
16 among others: Al-Shabab, Shabaab, the Youth, Mujahidin
17 al-Shabaab Movement, Mujahideen Youth Movement, Mujahidin
18 Youth Movement spelled in a different way, Harakat Shabaab
19 al-Mujahidin, Hizbul Shabaab, Hisb'ul Shabaab, spelled in a
20 different way, al-Shabaab al-Islamiya, Youth Wing, al-Shabaab
21 al-Islam, al-Shabaab al-Jihaad, and the Unity of Islamic
22 Youth.

23 Throughout al-Shabaab's war against the TFG,
24 Transitional Federal Government, and its Ethiopian and
25 African Union supporters, al-Shabaab used harassment and

1 targeted assassinations of civilians, improvised explosive
2 devices, mines, mortars, automatic weapons, suicide bombings,
3 and general tactics of intimidation and violence.

4 Until his death on or about May 1st, 2008, Aden
5 Hashi Ayrow, also known as "Shikhalow," Shiqalow," or
6 "Sheikalow," spelled in a different way, or "Majadhub," also
7 known as "Slim Limbs," but hereafter referred to as Ayrow,
8 A-y-r-o-w, was a prominent military leader of al-Shabaab.
9 Ayrow called for foreign fighters to join al-Shabaab in a
10 holy war against the Ethiopian and other African forces in
11 Somalia.

12 Defendant Basaaly Saeed Moalin, also known as
13 Basal, also known as "Muse Shekhnor Roble," but referred to
14 as Moalin, was a taxicab driver and a resident of San Diego
15 County.

16 Defendant Mohamad Mohamad Mohamud, also known as
17 "Mohamad Khadar," also known as "Sheik Mohamad," but who will
18 be referred to as Mohamud, was an imam at the al-Ansar
19 mosque, or Masjid al-Ansar, and a resident of San Diego
20 County.

21 Defendant Issa Doreh, also known as "Sheikh Issa,"
22 referred to as Doreh, worked at Shidaal Express, a money
23 transmitting business with offices in San Diego, California.

24 Defendant Ahmed Nasir Taalil Mohamud, referred to
25 as "Nasir," was a taxicab driver and a resident of Orange

1 County, California.

2 Count 1 in the indictment is a conspiracy to
3 provide material support to terrorists, and it's brought
4 against all four defendants, and it states in pertinent part:
5 Beginning on a date unknown and continuing to at least on or
6 about August 5, 2008, within the Southern District of
7 California and elsewhere, defendants did unlawfully and
8 knowingly conspire and agree with each other and with other
9 persons, known and unknown, to provide and to conceal and
10 disguise the nature, source, and ownership of material
11 support and resources, to wit, currency and monetary
12 instruments, knowing and intending that the material support
13 and resources were to be used in preparation for and in
14 carrying out violations of federal law, that is, conspiracy
15 to kill persons in a foreign country and conspiracy to use a
16 weapon of mass destruction outside of the United States.

17 The methods and means by which the defendants
18 sought to accomplish the objects of the conspiracy included,
19 among other -- among others, the following. A: Defendant
20 Moalin would communicate with Ayrow via telephone concerning
21 operations and attacks planned and carried out and to be
22 carried out in Somalia by Ayrow and al-Shabaab and concerning
23 funds needed by al-Shabaab.

24 Each of the defendants and others would transmit
25 money from California to Ayrow and al-Shabaab to fund and

1 support fighters and their operations and attacks, which
2 included the use of explosives, landmines, and bombs.

3 C: Defendants, each of them, and others would
4 conceal and disguise the source, amount, nature, and
5 ownership of the funds transmitted to Somalia and would
6 structure the money transfers to evade and avoid
7 recordkeeping requirements.

8 D: When engaging in telephone conversations
9 discussing Ayrow, al-Shabaab, the attacks, the operations,
10 and the money transmissions, defendants Moalin, Mohamud,
11 Doreh, and Nasir, and others would use code names and code
12 words to disguise references to Ayrow, al-Shabaab, the
13 operations, and the money transmissions.

14 E: Following Ayrow's death defendants, and each of
15 them, and others would continue to transmit funds from San
16 Diego, California, to Somalia to support al-Shabaab.

17 Following Ayrow's death defendants, and each of
18 them, and others would transmit funds to other militias
19 engaged in violence against the TFG and its supporters.

20 G: The funds transmitted to Somalia would include
21 the following approximate amounts on or about the following
22 dates: January 1, '08, \$1,950; January 1, '08, \$1,950;
23 February 13, '08, \$1,300; February 13, '08, \$700; April 23,
24 '08, \$1,900; February 23, '08, \$1,100; July 15, '08, \$1,250;
25 July 15, '08, \$1,030; July 23, '08, \$1,860; July 23, '08,

1 \$1,650; August 5, '08, \$860; August 5, '08, \$350.

2 In furtherance of said conspiracy and to effect and
3 accomplish the objects thereof, the following overt acts,
4 among others, were committed within the Southern District of
5 California and elsewhere:

6 A: On or about December 21, 2007, Ayrow advised
7 defendant Moalin by telephone that he urgently needed several
8 thousand dollars. Defendant Moalin replied that he would
9 take care of the issue swiftly with "the cleric" and with
10 "Sheik Issa."

11 B: On or about December 21, 2007, defendant Moalin
12 advised defendant Doreh by telephone that "\$1 a day per man"
13 was needed for the forces.

14 C: On or about December 22, 2007, defendant Moalin
15 advised defendant Nasir by telephone that "the young men who
16 are firing the bullets" needed money for the forces in
17 Burhakaba, Somalia, who had "killed 60" and destroyed up to
18 five vehicles in the previous month.

19 D: On or about January 20, 2008 after telling
20 defendant Moalin that "we planted a landmine" for an
21 individual "who was traveling on that road; he was almost
22 hit." Ayrow instructed defendant Moalin by telephone to tell
23 Sheik Mohamed that "he must let us know the amount of money
24 we can expect every month even if it is \$100."

25 E: On or about February 13, 2008, defendants

1 Moalin, Doreh, Mohamud caused the transfer of \$2,000 from San
2 Diego, California, to Somalia.

3 F: On or about February 14, 2008, defendant Moalin
4 told Ayrow by telephone that "Yusuf Mohamed Ali" was the
5 recipient name used to transfer a total of \$2,000 to Ayrow.

6 G: On or about April 12, 2008, Ayrow told
7 defendant Moalin by telephone that "it is the time to finance
8 the jihad," and that "if we had bullets for this enemy, we
9 would have destroyed them."

10 H: On or about April 12, 2008, defendant Moalin
11 told an individual by telephone that "if they are to
12 eliminate those men," then "we must send someone to talk to
13 the people. We can find 30 men who can pay small amounts."

14 I: On or about April 17, 2008, defendant Moalin
15 told defendant Mohamud by telephone that "calls are coming
16 from the man," and that defendant Mohamud should hold back 20
17 or 30 trusted people at the mosque to tell them to contribute
18 money.

19 J: On or about April 23, 2008, defendants Moalin,
20 Doreh, and Mohamud caused the transfer of approximately
21 \$3,000 from San Diego, California, to Somalia.

22 K: On or about April 24, 2008, defendant Moalin
23 advised Ayrow by telephone that the "three bundles," code for
24 \$3,000, were sent from San Diego.

25 L: On or about July 8, 2008 defendant Doreh

1 advised defendant Moalin by telephone that the money had been
2 sent and that Dhunkaal Hersi -- that's in quotes -- "Dhunkaal
3 Hersi," was the code name used as the sender's name.

4 M: On or about July 13, 2008, after being advised
5 by uncharged co-conspirator number 1 in Somalia that it was
6 difficult to replace ammunition and that each rocket
7 propelled grenade cost \$270, defendant Moalin told uncharged
8 co-conspirator number 1 by telephone that "five cartons,"
9 code for \$5,000, were on their way but would be broken into
10 several transfers.

11 N "on or about July 15, 2008, defendant Doreh
12 caused the transfer of \$2,280 from San Diego, California, to
13 Somalia.

14 O: On or about July 18, 2008, defendant Moalin and
15 defendant Nasir discussed over the telephone that they would
16 "lay low," and would proceed with the financial support under
17 the "pretense" of helping the poor.

18 P: On or about July 23, 2008, defendant Moalin
19 caused the transfer of \$1,650 from San Diego, California to
20 Somalia, all of this in violation of federal law.

21 Count 2 charging conspiracy to provide material
22 support to a foreign terrorist organization is brought
23 against each of defendants and incorporates the allegations
24 that have been referred to previously, and further states:
25 Beginning on or about March 18, 2008 and continuing to at

1 least on or about August 5, 2008 within the Southern District
2 of California and elsewhere and occurring in and affecting
3 interstate and foreign commerce, the defendants, and each of
4 them, did unlawfully and knowingly conspire and agree with
5 each other and with other persons, known and unknown, to
6 provide material support and resources, to wit, currency and
7 monetary instruments to a foreign terrorist organization,
8 namely al-Shabaab, which has been designated as a foreign
9 terrorist organization since on or about February 26, 2008,
10 knowing that the organization was designated as a terrorist
11 organization as defined in federal law and that the
12 organization had engaged and was engaging in terrorist
13 activity and terrorism.

14 The methods and means by which the defendants
15 sought to accomplish the objects of the conspiracy included,
16 among others, some of the allegations in earlier paragraphs
17 which are incorporated and realleged by reference in this
18 particular count as well as the transfer of funds from the
19 United States to Somalia in the following approximate amounts
20 on the following dates: April 23, 2008, \$1,900; April 23,
21 2008, \$1,100; July 23, '08, \$1,650; August 5 of '08, \$350 in
22 violation of federal law.

23 Count 3 is a count brought against each defendant
24 and is charging conspiracy to launder monetary instruments.
25 Earlier allegations are incorporated into this particular

1 count, which further states that beginning on a date unknown
2 and continuing to at least on or about August 5, 2008, the
3 defendants, and each of them, did unlawfully and knowingly
4 conspire and agree to transmit and transfer monetary
5 instruments and funds from a place in the United States to a
6 place outside the United States, to wit, Somalia, with the
7 intent to promote the carrying on of specified unlawful
8 activities, to wit, providing material support to a foreign
9 terrorist organization in violation of federal law; providing
10 material support to terrorists in violation of federal law;
11 and conspiracy to kill persons in a foreign country in
12 violation of federal law.

13 Count 4 charges Mr. Moalin only with providing
14 material support to terrorists and states: On or about
15 January 3, 2008 within the Southern District of California
16 and elsewhere, Moalin did unlawfully and knowingly provide
17 and attempt to provide material support and resources, to
18 wit, a house in Somalia, knowing and intending that the
19 material support and resources were to be used in preparation
20 for and in carrying out a violation of federal law,
21 conspiracy to kill persons in a foreign country, all in
22 violation of federal law.

23 Count 5 brought against defendants Moalin, Mohamud,
24 and Doreh only, not defendant Nasir, charges providing
25 material support to foreign terrorists -- to a foreign

1 terrorist organization, incorporates earlier allegations, and
2 then adds: On or about April 23, 2008, within the Southern
3 District of California and elsewhere, affecting interstate
4 and foreign commerce, defendants Moalin, Mohamud, and Doreh
5 did unlawfully and knowingly provide and attempt to provide
6 material support and resources, to wit, approximately \$3,000
7 in currency and monetary instruments to a foreign terrorist
8 organization, namely al-Shabaab, which has been designated as
9 a foreign terrorist organization since on or about
10 February 26, 2008, knowing that the organization was
11 designated as a terrorist organization as defined by federal
12 law, and that the organization had engaged and was engaging
13 in terrorist activity and terrorism in violation of federal
14 law.

15 Ladies and gentlemen, that's a long indictment. I
16 appreciate your patience. It needed to be read to you once.
17 The indictment is not handed to you; the indictment is not
18 given to the jurors who will ultimately serve on this case,
19 the indictment does not go in with the jurors during
20 deliberations, so it was important to read the pertinent
21 portions of the indictment to you at this time. And, once
22 again, I must advise you you must distinctly understand that
23 what I have just read are simply charges and that they are
24 not in any sense evidence of the allegations contained in the
25 charges. To the charges, to each and every one of them, each

1 defendant who's charged in a particular count has pled not
2 guilty, which is a complete denial of the charges, making it
3 incumbent upon the government, acting through the U.S.
4 Attorney's office, to prove their case beyond a reasonable
5 doubt. And I'll have more to say about reasonable doubt a
6 little bit later on.

7 At this time, as I indicated previously, I would
8 like to impart to you some general instructions that will be
9 of assistance to you if you are selected as a juror in this
10 case.

11 The right to a trial by a jury, ladies and
12 gentlemen, is a right that is guaranteed by the Constitution
13 of the United States, and it is very important that jurors
14 clearly understand what their obligations are. First of all,
15 let me add that this right that is guaranteed by the
16 Constitution is a right that is guaranteed to citizens and
17 noncitizens.

18 It will be the obligation of the jurors during the
19 course of the trial to determine the facts of the case as the
20 facts are submitted to them, as the facts are developed from
21 the evidentiary record here in court and not from any other
22 source whatsoever.

23 In fulfilling your responsibility as judges of the
24 facts, you will have to determine what the facts are and also
25 what weight you should give to the facts that you find from

1 the evidence. It is also your responsibility to determine
2 the credibility or believability of witnesses who testify in
3 this case, and you must utilize the same standards in
4 assessing a witness's believability regardless of who that
5 witness is; regardless of whether that witness is affiliated
6 with one side of the case or another or not, regardless of
7 whether that witness is someone in law enforcement or not,
8 regardless of whether that witness is an expert witness or
9 not, you must apply the same standards in assessing a
10 witness's believability.

11 Now, obviously you can weight those standards
12 differently as you are the judges of the facts, and that will
13 be your obligation to do so, to look at the testimony in this
14 case critically, to weigh the credibility of witnesses who
15 testify. But the standards don't change; the criteria don't
16 change for making that determination of witness credibility
17 or believability.

18 Among the standards would be the manner in which a
19 witness testifies, the character and quality of that
20 testimony, the demeanor of the witness, that is, the manner
21 of the witness as the witness testifies, and the attitude of
22 the witness in terms of giving testimony. Any bias,
23 interest, or other motive a witness may have may also be
24 considered by you; any prior inconsistent statements that may
25 have been made, that is, a statement made by a witness before

1 trial that is inconsistent with the testimony given by the
2 witness at the time of trial; prior consistent statements
3 that may come in during the course of the trial; and any
4 other matters that may bear on the reasonableness of a
5 witness's testimony. Those are just some of the factors that
6 you may take into account but by no means an exhaustive list,
7 and I will fully instruct the jury on this particular subject
8 as well as all other matters the jury needs to be instructed
9 on at the end of the case.

10 There is an important limitation, ladies and
11 gentlemen, upon the power of jurors to decide questions of
12 fact. All questions of fact must be decided in conformity
13 with the rules of law that will be given to the jury by the
14 trial judge, by the Court. It will be the obligation of all
15 jurors to follow the law that is given to the jury and to
16 determine what evidence shall be heard and how that law will
17 apply to the evidence that is developed from the record.

18 At the end of the case, you will receive
19 instructions as to the law stating the principles involved in
20 a case such as this to be applied by you to the facts of the
21 law as you find those facts to be from the evidence. It will
22 be your absolutely obligation to follow the law in that
23 regard, ladies and gentlemen; even though you may question
24 the wisdom of the law or have some other reservation about
25 it, it is your duty to follow it.

1 It would not be appropriate for the attorneys to
2 instruct you on the law; that is the Court's responsibility,
3 and as I said, I will do that at the end of the case and at
4 other times that seem appropriate.

5 The Court regulates the conduct of the trial. I
6 also have the responsibility of determining whether or not
7 evidence is admissible. We do have rules of evidence that
8 govern the admissibility of evidence during a trial. These
9 rules of evidence guide us in the way we conduct a trial.

10 If an attorney makes an objection to the
11 introduction of testimony or, more accurately, to a
12 particular question, he or she is telling me that he or she
13 does not believe that the proffered testimony falls within
14 the rules of evidence. When I overrule the objection and the
15 evidence comes in, all that I am saying, in effect, is that
16 the jury has a right to hear that evidence in accordance with
17 the rules of evidence. You may give that evidence a great
18 deal of weight, very little weight, or no weight at all; that
19 will be your prerogative as judges of the facts.

20 Now, in the event that I sustain an objection to a
21 question, that means you must completely disregard the
22 question because the mere asking of a question to which there
23 is no answer may not be considered by you as evidence in this
24 case regardless of how suggestive the question might have
25 been.

1 And also bear in mind, ladies and gentlemen, that
2 there may be times that testimony is given, a question is
3 answered, then there is a motion to strike by one side or the
4 other, strike the testimony in whole or in part, and when
5 that happens -- and there are times when it happens and for
6 good reason -- then I will certainly work with the jurors,
7 explain what part of a statement may remain in evidence, what
8 part of a statement has been stricken. And there are times
9 when in all probability I'm going to admit evidence for a
10 limited purpose, and if the purpose of that evidence is
11 limited, then I will attempt to advise you at that particular
12 point in time that evidence has been admitted for a limited
13 purpose.

14 The end result of a jury trial is that jurors
15 render a verdict which is fair and impartial and represents a
16 careful weighing of the facts as established by the evidence
17 to which have been applied the principles of law given to the
18 jury. The attainment of such a result does depend upon
19 coordination between the Court and the jury. I can assure
20 you that at no time will I suggest directly or indirectly
21 what your decision should be in this case nor will I indicate
22 my opinion in that regard.

23 Another very, very, very vital matter, especially
24 in a case like this, given the charges, ladies and gentlemen,
25 is that every juror keep an open-minded attitude toward this

1 case and that you not decide this case until all of the
2 evidence is in, the instructions have been given to you, and
3 also bear in mind the right of the litigants to have their
4 attorneys argue their respective cases to you at the end of
5 the case. Only when all of these things is the case ready
6 for submission to the jury and its ultimate decision.

7 It's also very important that you remember that as
8 jurors you may not discuss this case with anyone, and this
9 admonition, this instruction, applies now and at all times
10 forward. You simply may not discuss this case amongst
11 yourselves or with anyone else or form or express any
12 opinions on the case until the case has been submitted to you
13 and obviously you are a juror on the case.

14 Now, this admonition, as I indicated, not to
15 discuss the case includes, as I say, fellow jurors, it
16 includes the participants in this case, the attorneys,
17 parties, witnesses, spectators, people in and about the
18 courtroom, people in your personal lives, your family, your
19 friends, work associates, everyone. You may not discuss this
20 case in any way, shape, or form.

21 I strongly urge you not to engage in any
22 conversation with any of the participants in this case on any
23 subject that may not even be connected with the trial because
24 that creates a bit of an appearance problem that I in all
25 probability would have to delve into, and so please keep your

1 respectful distance in that way. At the same time, we try to
2 be civil when we're in and about the courthouse; a good
3 morning, a hello, a wave of the hand, a nod, a smile is not
4 forbidden, but any communication beyond that is forbidden.

5 At each recess or adjournment of the court, you
6 will be admonished as follows, that it is the duty of the
7 jurors during the recess or adjournment not to converse among
8 themselves on any subject connected with the trial and not to
9 allow anyone to converse with them on any subject connected
10 with the trial; and it is the duty of jurors not to form or
11 express any opinions until the case has been given to the
12 jury for its decision.

13 That's the long form of the admonition; I just gave
14 it to you. At times I may just say "Remember the
15 admonition"; that's what I have reference to. Or I may just
16 say "Please do not discuss the case or make any decisions at
17 this time." I'm referring to the admonition, the long form
18 of the admonition, ladies and gentlemen.

19 If I neglect to give you this admonition at any
20 time, it applies at all times. If any person attempts to
21 discuss the case with you, even though we may presume that he
22 or she is doing so inadvertently, you must immediately advise
23 that individual that you are a juror and have no right to
24 discuss the case. If the person were to persist in efforts
25 to discuss the case with you, then it would be your

1 obligation to bring that matter to my attention, and I would
2 try to address it myself.

3 No statement, ruling, remark, or comment which I
4 may make during the course of the trial is intended to
5 indicate my opinion on what your verdict should be or to in
6 any way influence in your determination of the facts.

7 Now, at times it is conceivable that I might ask a
8 witness a question, although doubtful. If I do so, it is for
9 the purpose of bringing out something that I feel in fairness
10 to all parties must be brought out or perhaps an answer, a
11 bit of testimony was given and I'm not sure everyone heard
12 it, and I want to make sure that everyone did hear it; I
13 might ask a witness to repeat an answer. In any event, if I
14 ever ask a question, it will never be an indication of the
15 weight that I feel you should give to that witness's
16 testimony; it will just be for the stated purpose.

17 Ladies and gentlemen, a defendant in a criminal
18 case is presumed to be innocent until the contrary is proved,
19 until and unless the contrary is proved, and the burden of
20 proof is on the government to prove its case beyond a
21 reasonable doubt.

22 Reasonable doubt is defined essentially as follows:
23 It is a doubt based upon reason and common sense and may
24 arise from a careful and impartial consideration of all the
25 evidence or from lack of evidence. Proof beyond a reasonable

1 doubt is proof that leaves you firmly convinced a defendant
2 is guilty as to a particular charge. You'll be further
3 instructed on the definition of reasonable doubt at the end
4 of this case when you receive all of your instructions.

5 The fact that the defendants and each of them here
6 are in court -- the mere fact they are here in court, the
7 mere fact that charges have been brought against them is no
8 evidence of any wrongdoing in this case. You are to consider
9 in this case only evidence properly received during this
10 particular trial in determining whether or not the defendants
11 are guilty or not guilty of the charges. Each defendant, as
12 I've indicated, has entered a not guilty plea as to all
13 charges brought against that defendant, which is a complete
14 denial, as I said earlier -- you know, some of these
15 principles are so important, they bear repeating -- making it
16 incumbent upon the government to prove its case. And until
17 and unless this is done, until and unless the government
18 carries its burden, the presumption of innocence does
19 prevail.

20 Both the government and the defendants are entitled
21 to have the individual opinions of each juror, which means
22 that each of you, if chosen to sit in this case, must decide
23 for yourself the question of whether a defendant is guilty or
24 not guilty. However, you should do this only after a
25 discussion of the evidence and the instructions with the

1 other jurors.

2 Ladies and gentlemen, I want to stop at this
3 particular point in time before I get to the next phase of
4 what I'd like to do this morning, and I want to once again
5 ask that most important question I asked previously: Knowing
6 the nature of the case, knowing the allegations contained in
7 the charges, if there is anyone here who feels that he or she
8 cannot sit as a fair and impartial juror for any reason,
9 would you please raise your hand at this time. I see three
10 hands raised. I'll do what I did the first time around and
11 ask each of the two individuals on my right side to state
12 their names, please.

13 PROSPECTIVE JUROR: I'm Jafer Kazem.

14 THE COURT: Would you spell your last name, please.

15 PROSPECTIVE JUROR: K-a-z-e-m.

16 THE COURT: First name, sir?

17 PROSPECTIVE JUROR: J-a-f-e-r.

18 THE COURT: Thank you, sir. There was one other
19 person on -- yes, sir.

20 PROSPECTIVE JUROR: My name is Eric Amundsen,
21 A-m-u-n-d-s-e-n.

22 THE COURT: Thank you, sir. We have one further
23 hand raised on this side of the courtroom.

24 PROSPECTIVE JUROR: Estrellita Tan, T-a-n.

25 THE COURT: Would your spell last name, please.

1 PROSPECTIVE JUROR: T as in Tom, a-n.

2 THE COURT: And first name?

3 PROSPECTIVE JUROR: Estrellita.

4 THE COURT: Okay. May I see Mr. Kazem first with
5 Mr. Amundsen and Ms. Tan waiting for us just behind the bar
6 there. Thank you.

7 (Following is a sidebar conference.)

8 THE COURT: What is the nature of your concern,
9 sir?

10 PROSPECTIVE JUROR: Being from Afghanistan and
11 being exposed to terrorism activities, I have a hatred for
12 some groups.

13 THE COURT: You have a what now?

14 PROSPECTIVE JUROR: A hatred to some particular
15 groups. I think my judgment might be bad.

16 THE COURT: Okay. You feel that based on what
17 you've heard thus far, particularly all the allegations --

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: -- it just might be too difficult --

20 PROSPECTIVE JUROR: Al-Shabaab is a terrorist group
21 similar to Afghan mujahedin.

22 THE COURT: Well, I'm going to -- I'm going to
23 excuse you for cause and ask that you return to the jury
24 lounge in the other courthouse, okay. Thanks for your time
25 and service.

1 PROSPECTIVE JUROR: Sure.

2 THE COURT: And they'll have more information for
3 you over there, okay?

4 PROSPECTIVE JUROR: Thanks, your Honor.

5 THE COURT: Thank you for your time and service,
6 sir. Counsel, gather around, please. You know, there's no
7 question that al-Shabaab is a terrorist organization, so -- I
8 almost said to this gentleman as he was venting against
9 al-Shabaab being a terrorist organization -- that's not the
10 issue in this case. Everybody agrees al-Shabaab is a
11 terrorist organization. There may be a need for me at some
12 point with another individual in some context to state that
13 that -- just to clarify -- that there's no disagreement here
14 on this accord. Does anyone have any concern about that?

15 MR. DRATEL: Just that --

16 THE COURT: If you do, I won't say anything. I
17 just want --

18 MR. DRATEL: No, no.

19 THE COURT: -- to keep moving on here.

20 MR. DRATEL: Just more about -- as long as it's
21 explored that when you say a terrorist organization, they may
22 not be a foreign terrorist organization in terms of what
23 you're talking about --

24 THE COURT: Well, if anybody --

25 MR. DRATEL: -- my kind of association. So I

1 just -- if you explore it that way, I think it's --

2 THE COURT: That's parsing it pretty carefully.

3 You know, there may be a need to let somebody know that if
4 they understand al-Shabaab to be a terrorist organization,
5 that does not disqualify them.

6 MS. MORENO: That's fine.

7 MR. DRATEL: No, I agree with that.

8 THE COURT: You can save your argument as to how
9 everything may be stacked up for you, but it may allay
10 someone's concern if at some point they're advised that
11 there's no issue here with respect to the nature of
12 al-Shabaab. I think there's agreement here that if it's
13 appropriate that that can be mentioned. All right.
14 Mr. Amundsen, please. Good morning, sir. What's the nature
15 of your concern?

16 PROSPECTIVE JUROR: I work in the motion picture
17 industry; I do large movies. Lot of the times we work with
18 current and former Navy SEALs, and I really don't believe
19 I'll give defendants a fair shake. I believe I'm biased on
20 an issue like this.

21 THE COURT: Okay. Well, only you know what's in
22 your heart. If you feel you're already leaning toward the
23 government here, that you're -- the defendants are not
24 playing on a level playing field with you, then we need to
25 know that. Is that the case with you?

1 PROSPECTIVE JUROR: It is, sir.

2 THE COURT: Okay. I'll excuse you for cause. I
3 appreciate your candor. I'll ask that you return to the jury
4 lounge, and they'll have more information for you over there.

5 PROSPECTIVE JUROR: Thanks.

6 THE COURT: Okay. Thank you. Ms. Tan? Hello, Ms.
7 Tan. Good morning. Why don't you come a little bit closer
8 and tell -- that's fine right there, just so that everybody
9 can hear you. I know, you're surrounded.

10 PROSPECTIVE JUROR: Good-looking.

11 THE COURT: Well, we'll take that.

12 MS. MORENO: Why is it all the men are going. What
13 about the women here?

14 THE COURT: Those of us who need that will
15 certainly accept it. Tell us what your concern is, please.

16 PROSPECTIVE JUROR: When you were reading the
17 charges, you kept saying violation of federal law. My job is
18 in law enforcement.

19 THE COURT: Your job is in law enforcement?

20 PROSPECTIVE JUROR: Law enforcement. I am a state
21 inspector, state investigator with the State of California.
22 And I would say 90, 95 percent of my job goes with regulatory
23 enforcement, local law enforcement, but under federal and
24 state law.

25 THE COURT: Okay. Well --

1 PROSPECTIVE JUROR: And I truly believe the nature
2 of my job might have a significant influence.

3 THE COURT: What do you do?

4 PROSPECTIVE JUROR: In fact I investigate hospitals
5 and healthcare facilities.

6 THE COURT: On what -- for what agency, the
7 Department of Health.

8 PROSPECTIVE JUROR: Department of Health.

9 THE COURT: Okay. That doesn't disqualify you
10 from -- anybody in law enforcement is enforcing some law.
11 When I was reading the allegations, the charges here, they're
12 just statutory references to what federal law has been
13 allegedly violated here, so that's all that means.

14 PROSPECTIVE JUROR: But this is something I've done
15 the past 20 years of my life. It's law enforcement.

16 THE COURT: That's okay. But what are you -- I
17 don't know quite what you're telling us. If you're telling
18 us because you consider yourself to be a law enforcement
19 officer --

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: -- that that somehow is going to cause
22 you to favor one side or the other in this case, then that's
23 something we need to know. If you feel that all of a sudden
24 you're leaning in favor of one side or the other simply
25 because of your job, then you need to tell us that. But just

1 because you're in law enforcement doesn't disqualify you from
2 sitting on this case, especially the kind of law enforcement
3 you're in. You're not a peace officer, you're not enforcing
4 military law, you're not enforcing statutes that have
5 anything to do with the charges in this case, and so unless
6 you're telling me that as a law enforcement officer that
7 causes you some --

8 PROSPECTIVE JUROR: Some of my job activities
9 include coordination with the Department of Justice and also
10 the Attorney General, particularly allegations of abuse,
11 sexual misconduct --

12 THE COURT: In hospitals?

13 PROSPECTIVE JUROR: Not only hospitals but the
14 public when there's allegation from hospital regarding
15 allegations against a family member --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: -- I might -- I have two cases
18 right now that's going on.

19 THE COURT: Okay. Can you be fair and impartial in
20 this case?

21 PROSPECTIVE JUROR: I really don't know. That's
22 the reason why I came here.

23 THE COURT: Only you can answer that question.

24 PROSPECTIVE JUROR: I wouldn't be affected really
25 honestly only because of the nature. And first of all, I

1 took an oath --

2 THE COURT: You took an oath.

3 PROSPECTIVE JUROR: An oath when I took this job
4 that I will uphold both federal law and state law --

5 THE COURT: Well, you know, something?

6 PROSPECTIVE JUROR: -- so I don't know.

7 THE COURT: I'm going to let you to go for cause,
8 Ms. Tan, only because in my view you don't want to be on this
9 jury, and you're somehow rationalizing because of your job --

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: -- you're just not -- you're not a good
12 juror or you're not -- I don't know if you're somehow
13 inclined to favor law enforcement or identify with law
14 enforcement. I can't see how that's going to matter in this
15 case. I just wanted you to know that even though I'm
16 excusing you for cause, I really have some doubt about what
17 you're telling me is the basis for your reason not to be on
18 this jury. I've heard enough to know that it's probably not
19 an appropriate case for you, however.

20 PROSPECTIVE JUROR: And with the experience, yeah,
21 that's a concern I have.

22 THE COURT: Well, thank you for your time and
23 service. We have other cases --

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: -- going out, and so you'll go over to

1 the jury commissioner's lounge area, and they'll tell you
2 what your future will be.

3 PROSPECTIVE JUROR: Okay. Thank you.

4 THE COURT: Thank you. Okay. Let's carry on.

5 (Sidebar conference concludes.)

6 THE COURT: Ladies and gentlemen, we may go
7 until -- well, I think we're going go into the noon hour
8 here. I've already received word that a few of you may need
9 to take a bit of a comfort break at this point. How many
10 would like -- how many would like a break at this time? All
11 right. There's several of you. What we're going to do is
12 we're going go take a very short break. There are a lot of
13 you. I'd like to have you take a ten-minute break, no more
14 than that. We'll get you back into the courtroom as quickly
15 as we can. But during recesses, everybody is asked to leave
16 the courtroom, and we'll bring you back in all at once. And
17 please take your seats when you get back here quickly.
18 They're not assigned seats; you can sit anywhere. Remember
19 the admonition not to discuss the case or make any decisions
20 at this time. Thank you.

21 (There was a break in the proceedings.)

22 THE COURT: Okay, ladies and gentlemen. Thank you
23 for promptly returning. There may be one or two of you
24 additionally I need to discuss with counsel to address a
25 matter of concern not related to the merits of the case at

1 all but other matters. Okay. Pretty shortly, ladies and
2 gentlemen, we're going to have these questionnaires passed
3 out for you. You're going to start them at about 11:30 or
4 so.

5 We've covered a lot of business this morning early,
6 at least preliminarily. There are a couple of things I'd
7 like to -- I'd like to emphasize, however, before we go
8 further and while you're filling out these questionnaires. I
9 want to talk about the presumption of innocence. I've
10 already done so a couple three times, but I want to emphasize
11 in this case the presumption.

12 Every defendant in every criminal case throughout
13 the entire country, whether in federal court or state court,
14 ladies and gentlemen, is presumed to be innocent until the
15 contrary is proven, until and unless, and that would be until
16 and unless the government proves its case. You've already
17 been told that several times, but it bears repeating.

18 What I want to emphasize right now is that the
19 presumption of innocence is a term that we have all heard and
20 we assume applies in every criminal case. I dare say every
21 one of you would be familiar with that -- with that
22 principle. But this is a presumption, ladies and gentlemen,
23 that has meaning, it really has meaning, and it has
24 consequences in this and every other criminal case. It's not
25 merely the recitation of words, for example; that's not what

1 it's all about. The burden is always on the government to
2 prove its case, and until and unless that happens, the
3 presumption of innocence prevails. The presumption of
4 innocence never shifts to a defendant in a criminal case, and
5 the burden that the government has can only be met by
6 evidence brought out during the course of this trial -- I've
7 already mentioned that to you -- and not from any other
8 source whatsoever.

9 As a corollary to the presumption of innocence, a
10 defendant has an absolute constitutional right not to
11 testify. The decision as to whether or not a defendant will
12 testify is the defendant's decision, and no one else can make
13 that decision. That decision must be respected. If a
14 defendant decides not to testify, then the presumption of
15 innocence is so strong that a juror may not draw any negative
16 inference from a defendant's decision not to testify. A
17 juror may not even consider or discuss a decision not to
18 testify, which decision, by the way, is constitutionally
19 protected for all persons, citizens and noncitizens alike.

20 Now, it might be natural for a juror, or anyone,
21 for that matter, to wonder or to speculate how a defendant
22 would have testified if a defendant had elected to testify,
23 but that kind of curiosity, that kind of speculation, that
24 kind of surmise must be set aside in this case. It's that
25 simple. It cannot be entertained or considered in any way,

1 shape, or form. No negative inferences may be drawn from a
2 defendant's decision not to testify. Okay. Enough said on
3 that particular principle at this point in time.

4 Another matter I wanted to address with each and
5 every one of you is the following. You have heard the name
6 of the organization identified, alleged to be a foreign
7 terrorist organization as al-Shabaab. It is that
8 organization that will be the focus of this case. Now, at
9 this particular point in time, I cannot say what all the
10 evidence will be in the case. I am informed that there may
11 be a reference at one point to another -- or another about or
12 to al-Qaeda. If there is any reference to al-Qaeda, it will
13 be only for a very limited purpose; I will tell you what that
14 purpose would be at the time there is any mention of
15 al-Qaeda. But I want to tell you what this case is not. It
16 is not a case about al-Qaeda. If there is a reference to
17 al-Qaeda, as I say, it will only be for a limited purpose.
18 The charges in this case do not involve al-Qaeda, and they do
19 not involve any activity of al-Qaeda. I'm talking about the
20 charges now in this case.

21 There will be no evidence in this case that the
22 defendants, or any of them, were members of al-Qaeda or
23 sponsored al-Qaeda activity. So there will be no evidence
24 that the defendants, or any of them, support al-Qaeda in any
25 way, shape, or form. This case involves the organization

1 known as al-Shabaab. I need to make that absolutely clear.
2 I think it's more effective if you hear it from me than if
3 you hear it from counsel because I can drive home this point,
4 and it's in the form of a legal instruction. It's in the
5 form of trying to frame a particular piece of evidence that
6 may or may not come in. It's a form of diffusing what many
7 of you feel or may feel around these two words, "al-Qaeda."
8 I don't want any reference to those words to in any way
9 create anything other than a level playing field for both
10 sides in this case. If there is a mention of al-Qaeda, you
11 should be able to fairly and objectively consider that
12 reference along with all the other evidence in the case.

13 I'll say no more about that. Counsel may want to
14 follow up with some of you at another point in the
15 proceedings here. My instruction to you would be, as it is
16 in every case, to deal with the evidence fairly, objectively,
17 give both sides a fair shake, and we can ask no more of those
18 people who actually fill the seats on this case.

19 If you feel you cannot fairly and impartially serve
20 on this case, then it would be your obligation, once again,
21 to raise your hand at this time or to indicate that on the
22 questionnaire upon further thought and reflection. That's
23 pretty much what I wanted to say before I wrap up these
24 remarks and we hand out questionnaires.

25 I want to tell you a little bit about a couple of

1 admonitions here. You know, I've told you that the evidence
2 in the case is the only basis upon which you can decide the
3 case. There may be -- there may be some media coverage of
4 this case. Quite frankly, I think if there is any media
5 coverage, I think it would be very, very limited. There may
6 have been in the past one or two articles that may have had
7 something to do with this particular case. It's the duty of
8 every juror to absolutely insulate themselves from any
9 case -- from any media reports or accounts of any case they
10 may be sitting on. I would go further, and I would say in a
11 case such as this, have nothing to do -- insulate yourselves
12 completely to any newspaper accounts -- assuming newspapers
13 are read by anyone anymore -- but news accounts, Internet
14 reports, television accounts, radio accounts, any other --
15 any other media accounts in whatever form having anything to
16 do with this case, with the subject of terrorism generally,
17 with the subject of politics in Africa. You see an article
18 in your medium of choice, whether it's a newspaper or some
19 other article, having anything to do with any subject in
20 these areas I've talked about. Put it aside. If you're
21 watching television and something begins to come up having
22 something to do, anything to do, just even on the periphery
23 of what we're dealing with, what's charged in this case, turn
24 the channel, turn off the radio, turn to another site.

25 Do not, please, do not do any independent research

1 or investigation into this case, the facts of the case, or
2 any of the participants in this case. Please do not Google
3 any of us, do not Google any subject having anything to do
4 with this -- with this case. You know, in the old days when
5 I tried cases, couple of centuries ago, you know, all we had
6 basically was newspaper accounts. You were told not to, you
7 know, not to read anything in the newspaper. You couldn't
8 investigate individuals. An admonition not to -- not to
9 perform any independent investigation meant, you know, if a
10 particular scene was involved, a particular location, don't
11 go to that location and make your own independent
12 observation, don't consult dictionaries for the meaning of
13 words and don't talk to your friends who may have expertise
14 in a given area, don't talk to any lawyers. That was it.
15 But now in this information age, there's so much out there
16 that it is so important for us to advise all of you in this
17 and every other case, do not perform any independent
18 investigation into the facts, the law having to do with this
19 case, personalities, participants, or any subject connected
20 with the trial. Okay. I beat that drum enough I hope.

21 What I'd like to do is pass out these
22 questionnaires, get you started on the questionnaires. I've
23 got a little bit of a checklist here -- up here, so because
24 it's up here, I may forget one or two things, but essentially
25 while you're doing the questionnaires, we're going to vacate

1 this room; all of us, all the participants in this case,
2 we're going to vacate this room. You have this room to
3 yourselves. Do your thing, fill out those questionnaires
4 honestly, truthfully, and then turn them in to Gaby. Gee, I
5 forgot to introduce Gaby, my courtroom deputy, Gabriela
6 Cazares, and Debra Henson, my court reporter, been working
7 together -- been working together as team forever. Debbie
8 was with me on superior court as well as here; we've been
9 working over 20 years together now. So we do work as a team,
10 and they'll be assisting you, as well as other staff members
11 and court attache.

12 So when you drop your -- your filled-out
13 questionnaire off with Gaby, she's going to validate your
14 parking; she's actually got a parking validation machine
15 here -- don't tell anybody about that outside this courtroom.
16 But she actually has a parking validation machine here, true?
17 For these folks -- Gaby does not have a parking validation
18 machine. Just listen to Gaby. See, I got into an area where
19 I don't know anything. And so you're going to fill out the
20 questionnaires, you're going to leave the questionnaires off,
21 and then we're going to look them over a little bit later in
22 the afternoon. And then remember to call in after six
23 o'clock, and you'll be given the appropriate message.

24 Most of you will be coming back, and you're going
25 to be coming back not -- well, let's see. You'll be coming

1 back actually to Courtroom 15, which is on the fifth floor,
2 tomorrow morning at 8:45 -- just giving you a little bit of a
3 preview -- it's going to be Courtroom 15, 8:45. We're not
4 going to be there with you. You're just going to assemble
5 there, and then you're all going to be brought down here
6 again to this courtroom. No? Anyway, we'll get back to you
7 on that one as well. I think you're going to be in Courtroom
8 15 -- we'll check with jury. I think I'm batting 500 on this
9 one now. I think you're going to be up on the fifth floor in
10 Courtroom 15 at 8:45, then brought down here, and then we'll
11 proceed further with jury selection. So that is it.

12 We're going to pass out these questionnaires now.
13 Remember, as you're filling out these questionnaires, you're
14 filling them out under oath. That oath you took applies.
15 Nancy? Nancy Prewitt's in the back here, and she's been
16 assisting as well. Aren't these folks, the ones who are
17 coming back, going to be in Courtroom 15 at 8:45?

18 MS. PREWITT: And there will be a parking thing
19 there tomorrow.

20 THE COURT: Tomorrow?

21 MS. PREWITT: They don't have to go to the --

22 THE COURT: So they've already been validated for
23 today. Okay. All right. So courtroom 15 tomorrow, fifth
24 floor, and your parking will be validated at that point
25 because Gaby will have a machine tomorrow morning. Okay. I

1 need to see two -- I'm going to -- you're going to take one
2 more recess, and then you're going to come in -- we're going
3 to have the questionnaires ready for you to go.

4 I do need to see, however, two of you, Mr. Moran
5 and Prospective Juror Hanmer. If the two of you could stay
6 behind for just a moment, the rest of you are on a recess.
7 We'll see you back in ten minutes, and you'll be filling out
8 your questionnaires. Remember the admonition.

9 (Following is a sidebar conference.)

10 THE COURT: Mr. Moran, will you please come
11 forward, then Mr. Hanmer. All right. Mr. Moran, I
12 understand something came up for you in terms of time. You
13 were prequalified, time-screened. What --

14 PROSPECTIVE JUROR: Yeah, I didn't understand.
15 When I received my notice for the long-term trial, I thought
16 the only way to get out of it was a medical disability or a
17 hospitalization. A month-long trial for me -- I support my
18 custom application for my company, Knox Attorney Service, in
19 five different offices I'm their only guy, so a month-long
20 trial would very much hurt my company at this point.

21 THE COURT: Is there any particular reason you
22 didn't take that up with the jury clerks this morning or at
23 any other time?

24 PROSPECTIVE JUROR: I asked her, but she said since
25 I had already answered yes, that she couldn't do anything.

1 THE COURT: Are you in business for yourself?

2 PROSPECTIVE JUROR: No, no. I'm just the sole
3 programmer/developer for the company.

4 THE COURT: There's nobody there to --

5 PROSPECTIVE JUROR: To take my job, no. We just
6 put in a website this month that's integrated with my
7 database, so there's some amount of support, but it's just
8 very important for me to be there.

9 THE COURT: What's the longest you could be away
10 without --

11 PROSPECTIVE JUROR: Oh, a week or two. I think --
12 I think it would --

13 THE COURT: Okay. All right. I'm going to excuse
14 you just for hardship on this case --

15 PROSPECTIVE JUROR: I'm sorry.

16 THE COURT: -- not for all cases. I'll ask you to
17 go back to the jury lounge. It may be that you'd be back on
18 another case of a shorter estimate.

19 PROSPECTIVE JUROR: Okay. So I should call tonight
20 then again or --

21 THE COURT: No, no you don't need to do that. Just
22 go back over to the jury lounge and tell them -- we'll
23 communicate with them as well. Just tell them that I've
24 excused you on this case only for hardship.

25 PROSPECTIVE JUROR: Thank you, your Honor.

1 THE COURT: All right. Thank you, sir.
2 Mr. Hanmer. This is the gentleman with the hearing issue.
3 Hello, Mr. Hanmer. Good morning to you, sir.

4 PROSPECTIVE JUROR: Good morning.

5 THE COURT: And I understand that you're using a
6 listening assistive device.

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: But that you've had a lot of difficulty
9 hearing what was said.

10 PROSPECTIVE JUROR: I could hear every word that
11 you said crystal clear, but I haven't the slightest idea what
12 oath I took when she read the oath. And when the -- when the
13 attorneys were introduced, I couldn't understand what they
14 were saying.

15 THE COURT: Because they were away from a
16 microphone.

17 PROSPECTIVE JUROR: No, there was some kind of
18 interference, feedback.

19 THE COURT: I see.

20 PROSPECTIVE JUROR: But I honestly don't think that
21 I'm going to be able to follow this.

22 THE COURT: Well, what do --

23 PROSPECTIVE JUROR: Well, I have a hard time at the
24 movies, and sometimes when people are talking to me, I
25 pretend that I understand what they're saying because I'm

1 embarrassed to not understand.

2 THE COURT: Let me stop you for just a moment. I
3 know I've been speaking into the microphone, so apparently
4 that's been pretty clear to you today. I'm concerned,
5 however, that you haven't been able to hear everything
6 counsel has said. Counsel won't be speaking directly into
7 the microphone as I have this morning, and I'm concerned you
8 may lose some of that, and I certainly don't want to create a
9 hardship for you here. The trial is going to be somewhat
10 lengthy, and I don't want you to feel as though you have to
11 strain, and I don't want you to miss anything. You've
12 already missed the oath apparently; that's not a good start.
13 Can you ask you to wait with Nancy over there by the bar? I
14 just want to discuss your case with counsel.

15 PROSPECTIVE JUROR: Sure.

16 THE COURT: Thank you. Okay. I'm happy to excuse
17 him just for hardship purposes, okay?

18 MR. DRATEL: Yes, your Honor.

19 THE COURT: All right. Okay. We're going to clear
20 out at this point, and then -- Nancy, Mr. Hanmer has been
21 excused for hardship from this case. Thank you, Mr. Hanmer.
22 So when the jurors come back -- well, we still got a pretty
23 good number; you've got a good net group of --

24 MS. FONTIER: Sixty-one at this point.

25 THE COURT: Yeah, yeah. We'll let them -- it's

1 quarter to 12:00 now. We'll let them do their
2 questionnaires. I've got that meeting until about two
3 o'clock. I can be back here at 2:00. You can certainly --
4 how are you going to get the questionnaires?

5 MR. COLE: I can pick them up, but I guess I just
6 won't know when they're done. I guess I can either hang
7 around or I can wait for a phone call from Gaby.

8 THE COURT: You're all going to be to together, is
9 that -- at some location where you --

10 MR. COLE: Yes. And I told them I would -- I told
11 them that once we receive them and have the copies, we would
12 contact -- I think I have a cell phone number for
13 Mr. Ghappour -- they're going to send someone over to pick up
14 their sets at my office; they'll come to my office, and
15 we'll --

16 THE COURT: Okay. I'll let you organize what you
17 need to organize. Just do it on your own --

18 MR. COLE: Yes.

19 THE COURT: I'll be back here at about two o'clock,
20 and we'll proceed with the questionnaires at that point. I
21 may -- you can tell me what questionnaires you've agreed or
22 what individuals can be released from further service on the
23 case, and we'll come up with a net group. I may have to make
24 a few decisions on a couple of these if there's no agreement,
25 we can talk about any red flags that need to be discussed,

1 and I think we've got plenty of time to do that. Okay.

2 MS. MORENO: Your Honor, I'm sorry. Does the Court
3 want us back here at two o'clock?

4 THE COURT: Yeah.

5 MS. MORENO: Okay. Would the Court entertain
6 giving us another 45 minutes or so because we believe that
7 that's not enough time. They still have to fill them out --

8 THE COURT: Okay. How much time --

9 MS. MORENO: -- they have to copy them, we have to
10 get them --

11 THE COURT: What's a good --

12 MS. MORENO: -- and we think -- I've already spoken
13 to Mr. Cole, and he and I are going to be talking about those
14 areas that either we can agree --

15 THE COURT: Tell me what you think --

16 MS. MORENO: I think three o'clock.

17 MR. DRATEL: It will reduce the job that you have
18 to do --

19 MS. MORENO: Yes.

20 MR. DRATEL: -- to a manageable number. I'm sorry.
21 It will reduce what the Court will be asked to decide as
22 opposed to those which we'll agree on so that I think we can
23 do everything between 3:00 and 5:00 and we won't have a
24 problem.

25 MS. MORENO: I think you're being optimistic.

1 THE COURT: All right. Give it your best shot.

2 MS. MORENO: Thank you, your Honor.

3 THE COURT: Okay. So if everybody would vacate the
4 courtroom, we'll bring the jurors back and, you know.
5 Counsel, if you don't want to leave from here, defense
6 counsel want to leave from another floor, you can do that so
7 they don't see you leaving without your clients.

8 MS. MORENO: The clients will be back at three
9 o'clock, your Honor, or no?

10 THE COURT: Back here at 3:00, I think that's the
11 plan.

12 MS. MORENO: Yes.

13 THE COURT: So, you know, you can take them out
14 that way. Nancy, there will be a lot of jurors out there
15 though, so --

16 MS. PREWITT: I was just going to take them down
17 the elevator. Should we -- we'll wait out in the hallway,
18 and you can give us a sign when they're back; when jurors are
19 back, just give us a sign.

20 (There was a break in the proceedings.)

21 (The following proceedings were sealed by the Court.)

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Certificate of Reporter

I hereby certify that I am a duly appointed, qualified, and acting Official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the mentioned cause on the date or dates listed on the title page of the transcript; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

Dated January 7, 2014 at San Diego, California.

/s/ Debra M. Henson (electronic)
Debra M. Henson
Official Court Reporter